

## **MDM Declaration Exhibit A-17**

Volume I  
Pages 1 to 102  
Exhibits None

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
SUSANNA MIRKIN and BORIS :  
MIRKIN, Individually and on :  
Behalf of All Others :  
Similarly Situated, : Civil Action  
Plaintiffs, : No. 18 Civ. 2949  
: (ARR)(RER)  
vs. :  
:  
XOOM ENERGY, LLC; and XOOM :  
ENERGY NEW YORK, LLC, :  
Defendants. :

- - - - -x  
VIDEOTAPED DEPOSITION OF DERYA ERYILMAZ,  
Ph.D., a witness called by the Defendant, taken  
pursuant to the Federal Rules of Civil Procedure,  
before Alexander K. Loos, Registered Diplomat  
Reporter and Notary Public in and for the  
Commonwealth of Massachusetts, at the Offices of  
Veritext Legal Solutions, 101 Arch Street, Suite  
650, Boston, Massachusetts, on Tuesday, November 15,  
2022, commencing at 10:25 a.m.

PRESENT:

Wittels McInturff Palikovic  
(By Steven L. Wittels, Esq.; Steven D.  
Cohen, Esq. (Via videoconference); and  
Ethan D. Roman, Esq. (Via videoconference))  
E-mail: Slw@wittelslaw.com  
Sdc@wittelslaw.com  
Edr@wittelslaw.com  
18 Half Mile Road  
Armonk, NY 10504  
914.775.8862  
for the Plaintiffs.

1	PRESENT (Continued):	1	PROCEEDINGS
2		2	THE VIDEOGRAPHER: Okay. We are on the
3	McDowell Hetherington, LLP	3	record. This is the videographer speaking, Shawn
4	(By Michael D. Matthews, Jr., Esq.)	4	Budd, with Veritext Legal Solutions.
5	E-mail: Matt.matthews@mhllp.com	5	Today's date is November 15th, 2022, and
6	1001 Fannin Street	6	the time is 9:25 a.m. We are here in Boston,
7	Suite 2700	7	Massachusetts to take the video deposition of Derya
8	Houston, TX 77002	8	Eryilmaz, Ph.D., in the matter of Susan Mirkin, et
9	713.337.5580	9	al. vs. XOOM Energy, LLC, and XOOM Energy New York,
10	for the Defendants.	10	LLC.
11		11	Would counsel please introduce themselves
12	ALSO PRESENT: David Coleman	12	for the record.
13	Shawn Budd, Videographer	13	MR. WITTELS: Steven Wittels from Wittels,
14		14	McInturff & Palikovic for plaintiffs and the
15	* * * * *	15	proposed class.
16		16	MR. ROMAN: Ethan Roman, Wittels McInturff
17		17	Palikovic for plaintiffs and the proposed class.
18		18	MR. COHEN: Steven Cohen, Wittels McInturff
19		19	Palikovic, for plaintiffs and the proposed class.
20		20	MR. MATTHEWS: This is Matt Matthews with
21		21	McDowell Hetherington for XOOM Energy, the
22		22	defendant.
23		23	Also with me today is XOOM's designated
24		24	testifying expert, David Coleman. XOOM's in-house
	Page 2		Page 4
1	INDEX	1	counsel, Christina Diller, may join us via Zoom at
2		2	some point but will not be speaking.
3	WITNESS DIRECT CROSS REDIRECT RECROSS	3	THE VIDEOGRAPHER: Okay. And would the
4		4	court reporter please swear in the witness.
5	DERYA ERYILMAZ,	5	DERYA ERYILMAZ, Ph.D.
6	Ph.D.	6	a witness called for examination by the Defendants,
7		7	having been satisfactorily identified by the
8	BY MR. MATTHEWS 5 87	8	production of her driver's license and being first
9	99	9	duly sworn by the Notary Public, was examined and
10	BY MR. WITTELS 81 98	10	testified as follows:
11		11	DIRECT EXAMINATION
12		12	BY MR. MATTHEWS:
13		13	Q. Good morning, Dr. Eryilmaz. Thank you for
14		14	being here today.
15	* * * * *	15	A. Good morning.
16		16	Q. Before we dive into questions about the
17	EXHIBITS	17	case, I'll go over some basic ground rules and get a
18		18	little bit of information about your background.
19	NO. DESCRIPTION PAGE	19	A. Sure.
20		20	Q. First of all, have you been deposed before?
21	(None)	21	A. No.
22		22	Q. First time?
23		23	A. First time.
24	* * * * *	24	Q. Okay. Great.
	Page 3		Page 5

<p>1 Q. I see.</p> <p>2 So in model one, when you are referring to</p> <p>3 an "overcharge," you are referring to anything that</p> <p>4 XOOM charged over its reported supply costs from the</p> <p>5 rate-setting workbooks?</p> <p>6 A. And some other data sets. But yes, overall</p> <p>7 that sounds reasonable.</p> <p>8 Q. What other data sets?</p> <p>9 A. We relied on, I think, three sets of data,</p> <p>10 primarily -- I would say four sets of data to be</p> <p>11 more accurate -- based on the data produced in the</p> <p>12 discovery requests.</p> <p>13 So rate-setting workbooks were one of the</p> <p>14 set of data. The other one was interval data where</p> <p>15 it had most of the -- it was more interval meter</p> <p>16 data where it presented the usage information by</p> <p>17 these XOOM customers, and -- and then we have</p> <p>18 received electric and gas separately, so I guess</p> <p>19 that's where the third and the fourth. And we also</p> <p>20 looked at the margin reports that XOOM produced when</p> <p>21 they were setting their rates.</p> <p>22 So those were the four forms of data sets</p> <p>23 that we received, and I -- I have compiled all of</p> <p>24 them in one single data set.</p> <p style="text-align: right;">Page 14</p>	<p>1 understand whether, you know, XOOM's charged rates</p> <p>2 are complying with this.</p> <p>3 And what we found, that there was -- the</p> <p>4 rates were higher than the actual and estimated</p> <p>5 supply costs. So that discrepancy represented as</p> <p>6 overcharge, or damages.</p> <p>7 BY MR. MATTHEWS:</p> <p>8 Q. Is what I'm saying different than that?</p> <p>9 MR. WITTELS: Objection to the form.</p> <p>10 You can answer.</p> <p>11 THE WITNESS: I guess it's close. What</p> <p>12 you're describing is close. It's just -- maybe you</p> <p>13 can rephrase and I can reaffirm.</p> <p>14 I don't remember how did you define it.</p> <p>15 BY MR. MATTHEWS:</p> <p>16 Q. Sure.</p> <p>17 I understood that you looked at usage as</p> <p>18 well --</p> <p>19 A. Yeah, uh-huh.</p> <p>20 Q. -- but when you refer to the</p> <p>21 "overcharge" --</p> <p>22 A. Yeah.</p> <p>23 Q. -- you are describing the difference</p> <p>24 between the supply costs reported in the</p> <p style="text-align: right;">Page 16</p>
<p>1 Q. Uh-huh.</p> <p>2 A. There were more than a thousand files --</p> <p>3 Q. Uh-huh.</p> <p>4 A. -- and I've compiled into one data set to</p> <p>5 be able to conduct the methodologies that we</p> <p>6 describe in the report.</p> <p>7 Q. Right.</p> <p>8 So I understand what you're saying about</p> <p>9 the sources of the information and the way in which</p> <p>10 you calculated things under model one.</p> <p>11 But just to be sure we're saying the same</p> <p>12 thing --</p> <p>13 A. Sure.</p> <p>14 Q. -- with respect to what you've referred to</p> <p>15 as an "overcharge," that is the difference between</p> <p>16 the rate XOOM charged and the supply costs that were</p> <p>17 reported in its rate-setting workbooks, correct?</p> <p>18 MR. WITTELS: Objection to form.</p> <p>19 But you can answer.</p> <p>20 THE WITNESS: I guess -- let me redefine</p> <p>21 what the data has and why we took the difference.</p> <p>22 So what this sales agreement says, it's</p> <p>23 "based on XOOM's actual and estimated supply costs."</p> <p>24 And that's what we request as data to be able to</p> <p style="text-align: right;">Page 15</p>	<p>1 rate-setting workbooks and the rates that XOOM</p> <p>2 actually charged --</p> <p>3 A. That's correct.</p> <p>4 Q. -- correct?</p> <p>5 A. That sounds correct, yes.</p> <p>6 MR. WITTELS: Objection.</p> <p>7 You can answer.</p> <p>8 THE WITNESS: One thing that I would say,</p> <p>9 the -- I guess I want to add that the actual and</p> <p>10 estimated supply cost information did not only</p> <p>11 coming from the rate-setting workbooks. There were</p> <p>12 multiple other data sources that we looked at, so</p> <p>13 that's what I'm saying.</p> <p>14 BY MR. MATTHEWS:</p> <p>15 Q. That's what I was getting at.</p> <p>16 What are the other data sources from which</p> <p>17 you pulled XOOM's actual and estimated supply costs?</p> <p>18 A. The interval data, as I mentioned, that had</p> <p>19 that. And then there were, you know, some summary</p> <p>20 data sets that XOOM produced.</p> <p>21 So I guess, to sum up, all the data came</p> <p>22 from XOOM. We didn't really add anything outside of</p> <p>23 XOOM's produced discovery.</p> <p>24 Q. Uh-huh.</p> <p style="text-align: right;">Page 17</p>

<p>1 A. But the data came in multiple forms.  2 So all I did was compile all the different  3 sets of data and put together that time series  4 between 2013 and 2020, '21, including rates and the  5 costs, and I took the difference. And that's the  6 overcharge --  7 Q. Uh-huh.  8 A. -- that I've calculated.  9 Q. The interval data that you're mentioning is  10 just data about usage for electricity and natural  11 gas, right?  12 A. There were other information -- that data  13 set had included other information like meter IDs  14 and, you know, the ZIP codes and the programs that  15 the customers are involved in. But primarily the  16 usage information that we gathered from that and  17 matched it to the rate-setting workbook information,  18 too.  19 Q. Yes.  20 But the supply cost information that you  21 used in your data calculations came only from the  22 rate-setting workbooks, correct?  23 A. There was a summary spreadsheet produced  24 that had, like, a complete information. We used</p> <p style="text-align: right;">Page 18</p>	<p>1 primary data sets, but there were other data sets  2 that we had to go through and match the information.  3 Q. For supply costs?  4 A. Yes.  5 Q. What are the other documents?  6 A. I mean, I -- the other document is the  7 interval data and that summary data set that they  8 provided, as we requested from them, the -- like a  9 chunk of data that was summarized in one  10 spreadsheet.  11 Q. And the summary included supply cost  12 information?  13 A. Yes.  14 Q. Yes?  15 But the interval data did not include  16 supply cost information, correct?  17 MR. WITTELS: Objection.  18 THE WITNESS: The -- the -- so I don't have  19 the data in front of me, but the interval data  20 included the rate that was charged, not -- the final  21 rate that was charged, not the supply cost, as far  22 as I remember.  23 BY MR. MATTHEWS:  24 Q. Understood.</p> <p style="text-align: right;">Page 20</p>
<p>1 some of the data to gather that, and then some of  2 from the rate-sitting workbooks, because it came in  3 pieces, as I mentioned. So it was not, like, a  4 complete data set that was produced in discovery,  5 like handed to us as a complete data set. There  6 were more than a thousand spreadsheets, and we dig  7 into each one of them and compiled them into a  8 single spreadsheet.  9 So, I mean, I cannot tell you which Bates  10 number would be which at this moment because there  11 were a thousand data sets.  12 Q. Sure. And I'm not asking for that.  13 A. Yeah.  14 Q. And I'm not suggesting that you did  15 anything wrong. I just want to know the source of  16 the information from which you took what you are  17 referring to as the actual and estimated supply cost  18 information.  19 A. Source was XOOM.  20 Q. And more specifically in terms of  21 documents, the source was the rate-setting workbooks  22 that were produced in multiple versions?  23 A. I guess, yeah. I guess -- let me clarify.  24 Rate-setting workbooks was one of the</p> <p style="text-align: right;">Page 19</p>	<p>1 So in model one, what you are referring to  2 as the "overcharge" is anything that XOOM charged  3 over and above its reported supply costs that were  4 included in the rate-setting workbooks?  5 A. Yes. I would say.  6 Q. Okay. How about model two? How does model  7 two work?  8 A. Model two is -- the assumptions are a  9 little bit different there. We assumed, in case --  10 you know, it doesn't say in the contract, but  11 assumed this court, there is a margin appropriate  12 for -- for adding to the -- to the cost. Then we  13 calculated an alternative way. If there was a  14 margin allowed, then we had their margin-setting  15 workbooks, and so we calculated their margin  16 percentages and they were given for fixed- and  17 variable-rate customers.  18 So what we realized in that data set,  19 variable-rate customers had substantially higher  20 margin rate than the fixed-rate customers. So we  21 basically said, if XOOM -- I mean the difference,  22 the overcharge as defined is the difference between  23 the total -- the rates and the total cost plus the  24 fixed-rate customers' margins. That's how we</p> <p style="text-align: right;">Page 21</p>

<p>1 Q. Why did you leave full-time employment at 2 CRA? 3 A. I took a new job. Recently it's -- I'm in 4 transition to it right now. As you know, in 5 litigation, you can't drop all the cases that you 6 have immediately. So this is one of the cases that 7 were ongoing. So I'm in transition to a new job. 8 Q. Right. And congratulations. 9 A. Thank you. 10 Q. Why did you decide to change jobs? 11 A. I guess the new opportunity seems to be 12 that I will be still, you know, in the energy 13 industry and will be leading a big corporation's 14 decarbonization portfolio. So that seemed to be an 15 exciting opportunity. That's why. 16 Q. And that's with Amazon? 17 A. Yes. Yes, that's correct. 18 Q. And what will your job be there? 19 A. I am leading their -- again, I mentioned 20 decarbonization portfolio of their supply chain. So 21 I'll be working with their internal and external 22 suppliers to help them invest in renewable energy. 23 Q. And what does that mean on a more basic 24 level?</p> <p style="text-align: right;">Page 30</p>	<p>1 Okay. Is the -- since you left CRA, is the 2 rate that CRA is paid for your time in this case the 3 same as what is stated in the CRA report? 4 A. Yeah. 5 Q. That financial arrangement between CRA and 6 the plaintiffs has not changed? 7 A. Well, so I don't fully remember my rate 8 when I was at CRA. But potentially there's a 9 contractor rate structure that -- that may have 10 adjusted, but I guess I don't -- my short answer is 11 I'm not sure. 12 Q. Okay. What is your financial arrangement 13 under the contractor agreement? 14 A. I get paid per hourly. 15 Q. And what do you get paid per hour? 16 A. I believe it was listed in the report. It 17 was 450, I believe. 18 Q. Okay. 19 A. Per hour, yeah. 20 But, yeah, the report should have the most 21 accurate number. I don't have it in front of me. 22 Q. Okay. And you've agreed to continue 23 serving as a designated expert in this case, 24 correct?</p> <p style="text-align: right;">Page 32</p>
<p>1 A. I will be managing their renewable energy 2 programs, I guess, yeah. And then help the company 3 to have more clean production and more clean 4 energy -- purchase more clean energy, invest in 5 clean energy. So that will be helping them 6 strategize that. 7 Q. I see. 8 So sort of two sides of it: One is the 9 purchasing energy from -- 10 A. Market. 11 Q. -- more clean sources? 12 A. Right. 13 Q. Right? Green energy, whether wind or 14 solar? 15 A. Yeah. Uh-huh. 16 Q. And then, on the other side, making 17 investments in renewable companies? 18 A. Right. Yeah. 19 Virtual power plants or, you know, maybe 20 Amazon has, like, their on-site solar portfolio, so 21 I will help them to sort of -- where are the best 22 places in the world to invest in these kinds of 23 things. So that will be it. 24 Q. Understood.</p> <p style="text-align: right;">Page 31</p>	<p>1 A. Correct. 2 Q. And what is the specialized subject matter 3 on which you personally have been asked to opine? 4 A. On the quantitative analysis section. 5 So I have been in the energy industry for 6 more than ten years now, and I have a Ph.D. in 7 applied economics which requires me to do a lot of 8 quantitative analysis in the energy space, so I'm 9 familiar with energy data, and I teach at 10 Northeastern data analytics for energy economists. 11 So that, I believe, makes me qualified to do the -- 12 the quantitative analysis, so that's the part that I 13 will -- that I provided my opinion. 14 Q. Okay. Data analytics and quantitative 15 analysis; is that a fair summary of it? 16 A. Yeah. Of energy industry, I would say, 17 specifically, because that's what my expertise is. 18 Q. Okay. Are you offering any opinion about 19 how the pricing terms of the sales agreement should 20 be interpreted? 21 A. Well, I guess -- if you're asking me to -- 22 that I'm giving a legal opinion? Or is that how 23 my -- how I interpret the contract? I guess can you 24 rephrase the question? I'm not following.</p> <p style="text-align: right;">Page 33</p>

<p>1 Q. Okay. Are you offering any personal 2 interpretation of how the pricing terms of the sales 3 agreement -- let me rephrase it. 4 You're not offering a legal interpretation 5 of the sales agreement, right? 6 A. No. 7 Q. Okay. Are you offering any opinion about 8 how the pricing terms of the sales agreement should 9 be interpreted? 10 A. I guess as an energy economist, this -- you 11 know, there are terms in the -- in this contract 12 that only people who work a long time in the energy 13 industry -- like actual and estimated supply costs, 14 for example, is an industry-specific term. 15 So I am reading this as the contract says. 16 You know, based on actual and estimated supply 17 costs. 18 So my interpretation of that is the rates 19 should be according to this language. And I guess I 20 know what it means to be looking at the supply cost, 21 and that's what I'm understanding. 22 Q. Okay. Are you offering an opinion about 23 what "based on" XOOM's actual and estimated supply 24 costs means?</p> <p style="text-align: right;">Page 34</p>	<p>1 MR. WITTELS: Objection. 2 THE WITNESS: What do you mean when you say 3 "cost pass-through"? 4 BY MR. MATTHEWS: 5 Q. Do you believe that XOOM can seek to 6 recover any margin under this contract? 7 A. Under this contract, no. Because it 8 doesn't say that. As far as I can read, it doesn't 9 say that it can recover any margin. It says it 10 should be based on actual and estimated supply cost. 11 Q. And in your opinion, "based on actual and 12 estimated supply costs" means equal to actual and 13 estimated supply costs? 14 A. If it's not exactly equal to, it should be 15 very close to, as I mentioned. Very, very close to. 16 Q. And what does "very close to" mean? 17 A. Well, so "very close to" means that -- that 18 the -- there's no big discrepancy between the cost 19 and the final rate that's charged. So it should be 20 very, very similar. 21 Q. Uh-huh. 22 And what is a "big discrepancy"? 23 A. That cannot be explained by the contract or 24 by any economic justification that should be very</p> <p style="text-align: right;">Page 36</p>
<p>1 A. I mean, "based on" means -- "based on 2 actual and estimated supply costs" means very -- I 3 mean to me, very close to -- the rate should be very 4 close to XOOM's actual and estimated supply costs. 5 Q. Okay. And what is that opinion based on? 6 A. That is based on the contract language that 7 has, you know, "actual and estimated supply costs." 8 And "supply costs" are very specific 9 technical terms in the industry. So by reading 10 this, the XOOM's rates should be very close to the 11 supply costs of -- supply costs that XOOM 12 calculates. 13 Q. So to you, "based on" means very close to? 14 A. Very close to. At the -- yeah. At the 15 minimum, very close to, yeah. 16 Q. Does it -- it doesn't mean equal to? 17 A. Very close to. It may mean equal to, or 18 virtually -- virtually equal. 19 Q. What does "virtually equal" mean? 20 A. Very close to, I would say. It should be 21 very close to XOOM's actual and estimated supply 22 costs. 23 Q. Do you think this is a cost pass-through 24 contract?</p> <p style="text-align: right;">Page 35</p>	<p>1 big. 2 Q. Right. And in your opinion -- 3 A. Uh-huh. 4 Q. -- what is a "big discrepancy" between 5 actually and estimated supply costs and rate? 6 A. I mean, if, by looking at XOOM data, the 7 rates that were charged were extreme -- were about 8 50 percent higher than the costs that were charged, 9 and that suggested that the XOOM was overcharging 10 its customers their supply costs. So that -- that 11 was a good -- by looking at the data, that was a 12 good indication of that was not based on XOOM's 13 actual and estimated supply costs. 14 MR. MATTHEWS: I'm respectfully going to 15 object as nonresponsive. 16 Q. I'm asking a different question. 17 A. Okay. 18 Q. You're offering an opinion that "based on 19 actual and estimated supply costs" means "very close 20 to," which you have also said means "not a big 21 discrepancy from." 22 A. Uh-huh. Sure. 23 Q. Right? 24 MR. WITTELS: Objection. Objection.</p> <p style="text-align: right;">Page 37</p>



1 THE REPORTER: It was what?  
2 THE WITNESS: It was Loehde. I don't  
3 remember the witness' last name. Sorry.  
4 BY MR. MATTHEWS:  
5 Q. But you have some recollection -- I'm not  
6 asking you to identify the witness, but you have  
7 some recollection of XOOM witnesses testifying to  
8 the fact that XOOM has fixed costs that are not  
9 included in the supply costs reported in the  
10 rate-setting workbooks, right?  
11 A. I remember, like, a witness defining a  
12 fixed cost; but I don't really remember, like,  
13 whether it was included in the supply costs or not  
14 at this moment. I mean, if it's in front of me, I  
15 can take a look at it, but I don't remember the  
16 specific wording.  
17 Q. When you prepared the calculation for model  
18 one, did you take into account XOOM's fixed costs?  
19 A. No. I actually just took the supply cost  
20 related information and calculated the actual and  
21 estimated supply costs as produced by XOOM.  
22 Q. So if XOOM did not include fixed costs in  
23 the supply costs reported in the rate-setting  
24 workbook --

Page 66

1 A. Uh-huh.  
2 Q. -- then those fixed costs would be included  
3 in what you have characterized as an "overcharge"  
4 under model one, right?  
5 MR. WITTELS: Objection.  
6 THE WITNESS: As I mentioned, those fixed  
7 costs are not considered as part of supply costs;  
8 therefore, they are not included in the model.  
9 BY MR. MATTHEWS:  
10 Q. They're not --  
11 A. Included my calculation. I only considered  
12 supply -- the components of the supply cost.  
13 Q. They would not be included in the supply  
14 cost portion of your calculation, correct?  
15 MR. WITTELS: Objection.  
16 THE WITNESS: Again, I only considered the  
17 supply cost components. Because, you know, we are  
18 interested in looking at the supply costs and what  
19 the rate has been charged by XOOM.  
20 BY MR. MATTHEWS:  
21 Q. Yeah.  
22 A. So anything beyond supply cost is not  
23 included in the supply cost column.  
24 Q. Okay. How is that different from what I

Page 67

1 said?  
2 MR. WITTELS: Objection.  
3 THE WITNESS: I guess I thought you were  
4 saying that supply costs are -- you know, may -- you  
5 know, I don't know.  
6 I guess the way I understand it from what  
7 you've described is have I considered supply cost  
8 plus the other costs? But I did not. I just took  
9 the components of the supply cost, and I added them  
10 up -- I mean they were all, like, in a total supply  
11 column -- and calculated the excess -- excess  
12 charges.  
13 Q. Understood.  
14 So if fixed costs -- if XOOM has fixed  
15 costs in addition to the reported supply costs --  
16 A. Uh-huh.  
17 Q. -- then the only place that those fixed  
18 costs appear in your calculation under model one  
19 would be in the overcharge itself?  
20 MR. WITTELS: Objection.  
21 BY MR. MATTHEWS:  
22 Q. Correct?  
23 MR. WITTELS: Objection.  
24 THE WITNESS: I mean, I cannot tell from

Page 68


1 just looking at the data what that excess charge is  
2 included. They do not define -- XOOM did not define  
3 where that excess charge came from.  
4 There was no calculation providing that,  
5 that included the fixed cost. They -- there was no  
6 calculation that showed that rate included fixed  
7 costs as I reviewed the data. The data came in as  
8 rate versus the total cost of the components of the  
9 supply cost, or the total cost, and then the  
10 difference. I cannot tell what is included in the  
11 discrepancy. It was not described in the data.  
12 BY MR. MATTHEWS:  
13 Q. Okay. Model two.  
14 A. Uh-huh.  
15 Q. Model two, as we covered earlier, is  
16 essentially the same as model one, except that it  
17 allows XOOM to recover the same gross margin on  
18 variable-rate customers that XOOM's documents  
19 reported it recovered for fixed-rate customers,  
20 right?  
21 A. Right.  
22 Again, we -- exactly. The method one plus,  
23 if there was a margin -- you know, there's -- it  
24 doesn't say in the contract that there should be a

Page 69



<p>1 margin.</p> <p>2 But if -- suppose there is a margin. We</p> <p>3 basically provided that as an example to show, you</p> <p>4 know, what would be the charge look like.</p> <p>5 And looking at the margin reports, at least</p> <p>6 the margin that should be charged should be equal to</p> <p>7 the fixed-rate customers, which, you know, XOOM has</p> <p>8 made -- you know, has charged its fixed-rate</p> <p>9 customers, too, a margin. So there was that rate</p> <p>10 taken to calculate the overcharges.</p> <p>11 Q. And the purpose of -- of illustrating that</p> <p>12 second model was in case the court or the jury</p> <p>13 decides that some recovery of margin is</p> <p>14 appropriate --</p> <p>15 A. Yes.</p> <p>16 Q. -- right?</p> <p>17 But you don't believe that that reading of</p> <p>18 the contract is appropriate, right?</p> <p>19 A. No. By the read of the contract, it didn't</p> <p>20 specify margin, this contract, so -- and that's why</p> <p>21 I don't believe, yes.</p> <p>22 Q. So, in your view, if a contract doesn't</p> <p>23 specify that the company will recover margin, then</p> <p>24 the company is not allowed to recover margin?</p> <p style="text-align: right;">Page 70</p>	<p>1 BY MR. MATTHEWS:</p> <p>2 Q. If -- if an ESCO does not specify in a</p> <p>3 variable-rate contract that the rate will include</p> <p>4 margin, then, in your view, that ESCO cannot seek to</p> <p>5 recover margin --</p> <p>6 MR. WITTELS: Objection.</p> <p>7 BY MR. MATTHEWS:</p> <p>8 Q. -- on its variable rate?</p> <p>9 MR. WITTELS: She didn't say that.</p> <p>10 Objection.</p> <p>11 THE WITNESS: Is that a hypothetical</p> <p>12 example that -- are we just talking about X ESCO</p> <p>13 here, or --</p> <p>14 BY MR. MATTHEWS:</p> <p>15 Q. Yes.</p> <p>16 A. Is that a hypothetical example?</p> <p>17 Q. Yes.</p> <p>18 A. If -- again, I mean, I am looking at this</p> <p>19 contract. If another X ESCO was giving me a</p> <p>20 contract that doesn't list the margin, yes, then I</p> <p>21 would be looking at the specifics that they have put</p> <p>22 in the contract to determine their rates.</p> <p>23 Q. Understood. Thank you.</p> <p>24 In connection with this case, you have not</p> <p style="text-align: right;">Page 72</p>
<p>1 MR. WITTELS: Objection.</p> <p>2 THE WITNESS: I mean, this is -- I mean,</p> <p>3 I'm not a contract expert, but its contract -- it</p> <p>4 says -- it should be charging what it says in the</p> <p>5 contract. As -- I mean, you know, if -- what</p> <p>6 happens, for example, if a customer doesn't, you</p> <p>7 know, oblige with their contract? There's</p> <p>8 implications for that, too. So if it doesn't say in</p> <p>9 the contract, yes, that shouldn't be charged.</p> <p>10 BY MR. MATTHEWS:</p> <p>11 Q. If it doesn't specify a margin, it</p> <p>12 shouldn't be charged?</p> <p>13 MR. WITTELS: Objection.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. MATTHEWS:</p> <p>16 Q. And that's -- to be clear, that's your view</p> <p>17 more broadly? I'm not just asking about this</p> <p>18 specific XOOM contract --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- correct?</p> <p>21 MR. WITTELS: Objection.</p> <p>22 THE WITNESS: I guess -- what's the</p> <p>23 question?</p> <p>24</p> <p style="text-align: right;">Page 71</p>	<p>1 done any analysis of how XOOM's variable rates</p> <p>2 compared to the utilities' rates, correct?</p> <p>3 A. We -- I think Figure 1 in our report does</p> <p>4 present a -- like an illustration or -- like</p> <p>5 presents the data that shows the total cost versus</p> <p>6 the utility rate.</p> <p>7 Q. Shows how the two moved over the same</p> <p>8 period of time?</p> <p>9 A. Exactly.</p> <p>10 Q. Okay. But you're not offering an opinion</p> <p>11 in this case that under the sales agreement, that</p> <p>12 XOOM was not permitted to charge more than the</p> <p>13 utility, right?</p> <p>14 MR. WITTELS: Objection.</p> <p>15 THE WITNESS: No. I mean, XOOM -- I mean</p> <p>16 our basis was the actual and estimated supply cost,</p> <p>17 whatever it should be charging.</p> <p>18 BY MR. MATTHEWS:</p> <p>19 Q. And the utility's rate is irrelevant to</p> <p>20 that consideration, right?</p> <p>21 MR. WITTELS: Objection.</p> <p>22 THE WITNESS: It is irrelevant for this</p> <p>23 contract. But we showed -- you know, our figure</p> <p>24 presents, you know, whether the total cost and</p> <p style="text-align: right;">Page 73</p>

<div>1           RE CROSS-EXAMINATION</div> <div>2     BY MR. WITTELS:</div> <div>3     Q. As part of its analysis, the NYPSC -- and</div> <div>4 I'm reading from your report -- said that it had</div> <div>5 extensive -- an extensive set of hearings and</div> <div>6 investigation, right? That's what you wrote on</div> <div>7 Paragraph 34?</div> <div>8     A. Uh-huh. Yes.</div> <div>9     Q. Okay. You didn't read all the hearings and</div> <div>10 detail -- strike that.</div> <div>11       You didn't review all of the transcripts of</div> <div>12 the hearings, correct?</div> <div>13     A. No.</div> <div>14     Q. So they may well have looked at contracts</div> <div>15 to analyze whether the PSC thought they were -- the</div> <div>16 ESCOs were overcharging customers, correct?</div> <div>17       MR. MATTHEWS: Objection, leading.</div> <div>18       THE WITNESS: That is possible, yes. I did</div> <div>19 not read all of the documents that's produced in the</div> <div>20 proceeding to come up with this order.</div> <div>21       That's possible that there are transcripts</div> <div>22 that lists and discusses that contract review and</div> <div>23 opinions about that.</div> <div>24       MR. WITTELS: Okay. I have no further</div> <div>Page 98</div>	<div>1           C E R T I F I C A T E</div> <div>2     I, DERYA ERYILMAZ, Ph.D., do hereby certify that</div> <div>3 I have read the foregoing transcript of my</div> <div>4 testimony, and further certify under the pains and</div> <div>5 penalties of perjury that said transcript</div> <div>6 (with/without) suggested corrections is a true and</div> <div>7 accurate record of said testimony.</div> <div>8     Dated at _____, this ____ day of _____,</div> <div>9 2022.</div> <div>10</div> <div>11 _____</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>Page 100</div>
<div>1 questions.</div> <div>2           FURTHER REDIRECT EXAMINATION</div> <div>3     BY MR. MATTHEWS:</div> <div>4     Q. Dr. Eryilmaz, did you review any hearing</div> <div>5 transcripts from the PSC proceedings?</div> <div>6     A. No. I reviewed the order in detail.</div> <div>7       MR. MATTHEWS: Got it.</div> <div>8       Thank you very much.</div> <div>9       MR. WITTELS: Okay. Thank you.</div> <div>10       THE VIDEOGRAPHER: The time is 12:52.</div> <div>11 We're off the record.</div> <div>12       THE REPORTER: Copy, Mr. Wittels?</div> <div>13       MR. WITTELS: Put on the record read and</div> <div>14 sign, please.</div> <div>15       THE REPORTER: And a copy? You're</div> <div>16 ordering a copy?</div> <div>17       MR. WITTELS: No. Just read and sign.</div> <div>18 That's how it works.</div> <div>19       THE REPORTER: Off the record?</div> <div>20       MR. WITTELS: Off the record.</div> <div>21       (Whereupon, the deposition was</div> <div>22 concluded at 12:52 p.m.)</div> <div>23</div> <div>24</div> <div>Page 99</div>	<div>1           SUGGESTED CORRECTIONS</div> <div>2 RE: SUSANNA MIRKIN and BORIS MIRKIN, Individually</div> <div>and on Behalf of All Others Similarly Situated vs.</div> <div>3 XOOM ENERGY, LLC; and XOOM ENERGY NEW YORK, LLC</div> <div>4 WITNESS: DERYA ERYILMAZ, Ph.D., Vol. I</div> <div>5 The above-named witness wishes to make the following</div> <div>changes to the testimony as originally given:</div> <div>6</div> <div>7 PAGE LINE    SHOULD READ       REASON</div> <div>8 _____</div> <div>9 _____</div> <div>10 _____</div> <div>11 _____</div> <div>12 _____</div> <div>13 _____</div> <div>14 _____</div> <div>15 _____</div> <div>16 _____</div> <div>17 _____</div> <div>18 _____</div> <div>19 _____</div> <div>20 _____</div> <div>21 _____</div> <div>22 _____</div> <div>23 _____</div> <div>24 _____</div> <div>Page 101</div>

<div>1 COMMONWEALTH OF MASSACHUSETTS)</div> <div>2 SUFFOLK, SS. )</div> <div>3 I, Alexander K. Loos, RDR and Notary Public in</div> <div>4 and for the Commonwealth of Massachusetts, do hereby</div> <div>5 certify that there came before me on the 15th day of</div> <div>6 November, 2022, at 10:25 a.m., the person</div> <div>7 hereinbefore named, who was by me duly sworn to</div> <div>8 testify to the truth and nothing but the truth of</div> <div>9 her knowledge touching and concerning the matters in</div> <div>10 controversy in this cause; that she was thereupon</div> <div>11 examined upon her oath, and her examination reduced</div> <div>12 to typewriting under my direction; and that the</div> <div>13 deposition is a true record of the testimony given</div> <div>14 by the witness. I further certify that I am neither</div> <div>15 attorney or counsel for, nor related to or employed</div> <div>16 by, any attorney or counsel employed by the parties</div> <div>17 hereto or financially interested in the action.</div> <div>18  ve hereunto set my hand</div> <div>19 and this 27th day of</div> <div>20</div> <div>21</div> <div>22</div> <div>23 Notary Public</div> <div>24 Commission expires 5/5/28</div> <div>Page 102</div>	
<div>1 Steven Wittles</div> <div>2 Slw@witteslaw.com</div> <div>3 November 28, 2022</div> <div>4 RE: Mirkin vs. XOOM Energy</div> <div>5 DEPOSITION OF: Derya Eryilmaz 5544030</div> <div>6 The above-referenced witness transcript is</div> <div>7 available for read and sign.</div> <div>8 Within the applicable timeframe, 30 days, the witness</div> <div>9 should read the testimony to verify its accuracy. If</div> <div>10 there are any changes, the witness should note those</div> <div>11 on the attached Errata Sheet.</div> <div>12 The witness should sign and notarize the</div> <div>13 attached Errata pages and return to Veritext at</div> <div>14 errata-tx@veritext.com.</div> <div>15 According to applicable rules or agreements, if</div> <div>16 the witness fails to do so within the time allotted,</div> <div>17 a certified copy of the transcript may be used as if</div> <div>18 signed.</div> <div>19 Yours,</div> <div>20 Veritext Legal Solutions</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Page 103</div>	